

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KFD ENTERPRISES, INC.,

No. C-08-4571 MMC

Plaintiff,

v.

CITY OF EUREKA,

Defendant.

**ORDER GRANTING THIRD-PARTY
DEFENDANT KENNETH DAER'S
MOTION TO DISMISS FOURTH
THROUGH EIGHTH CLAIMS FOR
RELIEF FROM CITY OF EUREKA'S
FOURTH AMENDED COUNTER-CLAIM
AND CROSS-CLAIM; VACATING
FEBRUARY 4, 2011 HEARING**

And related counter and cross claims.

Before the Court is Third-Party Defendant Kenneth Daer's ("Daer") motion, filed December 27, 2010, to dismiss the Fourth through Eighth Claims for Relief from the City of Eureka's Fourth Amended Counter-Claim and Cross-Claim ("4ACC"). Third-Party Plaintiff City of Eureka ("the City") has filed opposition, to which Daer has replied.¹ Having read and considered the papers filed in support of and in opposition to the motion to dismiss, the

¹ In support of its opposition, the City has filed a request for judicial notice, to which Daer has filed an objection. To the extent the City seeks such notice for the limited purpose of showing the City was in possession of the subject documents, the objection is overruled; to the extent the documents are offered for any other purpose, including the truth of their content, the objection is sustained.

1 Court deems the matter suitable for decision on the parties' respective submissions,
2 VACATES the hearing scheduled for February 4, 2011, and rules as follows.

3 The Fourth through Eighth Causes of Action, by which the City alleges various
4 claims under California law, are, for the reasons stated by Daer, subject to dismissal, in
5 that, as to each such cause of action, the City has failed to allege facts sufficient to state a
6 claim against Daer, either based on his own conduct or as the alter ego of KFD.² (See Mot.
7 at 4:21-6:21.) In particular, the City's allegations are substantially identical to those
8 allegations previously found insufficient by the Court. (See Order Granting KFD and Daer's
9 Mot. to Dismiss, Jan. 13, 2010; Mot. at 5:5-6:8.)

10 Accordingly, Daer's motion to dismiss the Fourth through Eighth Causes of Action
11 from the 4ACC will be granted. Further, because the 4ACC represents the City's third
12 effort to state a claim against Daer and the City's allegations against said defendant have
13 not materially changed, further leave to amend will not be granted.

14 **CONCLUSION**

15 For the reasons stated above, Daer's motion to dismiss is hereby GRANTED, and
16 the Fourth through Eighth Claims for Relief in the City's Fourth Amended Counter and
17 Cross-Claim as alleged against Daer are hereby DISMISSED.³

18 **IT IS SO ORDERED.**

19 Dated: January 31, 2011

20 
21 MAXINE M. CHESNEY
22 United States District Judge
23
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25 _____
26 ² As the City acknowledges (see Opp. at 8:25-26), the 4ACC contains no alter ego
allegations with respect to KFD and Daer.

27 ³ If, in the course of discovery or otherwise during the pendency of the above-titled
28 action, the City develops new facts with respect to Daer's alleged liability, the City may
seek relief from this order by way of appropriate motion.